

*In the Matter of Ruth Spae, Motor Vehicle Commission*  
DOP Docket No. 2004-2764  
**(Merit System Board, decided September 8, 2004)**

Ruth Spae, an Agent with the Motor Vehicle Commission, appeals the attached determination of the Director, Division of Civil Rights and Affirmative Action (DCR/AA) with the Department of Transportation (DOT), stating that there was probable cause to substantiate a finding that the appellant violated the New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace (State Policy). It is noted that at the time of the investigation, the appellant was under the jurisdiction of the DOT.

In a letter dated December 22, 2003, the DCR/AA informed the appellant (Caucasian female) that it had conducted an investigation into allegations of violations of the State Policy filed by Samaris Pedraza (Hispanic female)<sup>1</sup> in which she asserted that the appellant had discriminated against her on the basis of her national origin. Specifically, Ms. Pedraza asserted that she was terminated on June 18, 2003 because she spoke Spanish and the appellant had required that Spanish not be spoken in the workplace. Moreover, Ms. Pedraza asserted that the appellant had treated Hispanic employees differently than other employees. The DCR/AA's investigation substantiated Ms. Pedraza's claims that the appellant engaged in conduct that violated the State Policy. Specifically, the DCR/AA found that the appellant was hostile toward employees who spoke Spanish in the workplace and that she had shown disdain and a lack of sensitivity toward the non-English speaking Hispanic community the office served. Based on these findings, it was determined that since the appellant was not a State employee at the time of the incidents, she would not be disciplined. However, the appellant was required to attend management and sensitivity training.

On appeal to the Merit System Board (Board), the appellant "disagrees" with the DCR/AA's determination in the instant matter. In particular, the appellant maintains that the termination of Ms. Pedraza was for a non-discriminatory reason. The appellant asserts that Ms. Pedraza had abused her sick and vacation leave and had violated the appellant's English-only policy. Specifically, she asserts that the policy prohibited staff members from speaking Spanish to one another while in the workplace. Moreover, the appellant notes that the Department of Labor, Division of Unemployment Benefits (DOL), determined that Ms. Pedraza was not entitled to any unemployment benefits since she had been discharged for misconduct. The appellant also notes that during her employment, Ms. Pedraza had been warned regarding the abuse of her sick and vacation leave. Furthermore, the appellant notes that Ms. Pedraza had received several written warnings for inappropriate behavior. The appellant also claims that Ms. Pedraza consistently violated the English-only policy she had instituted at the Agency because of the possibility of fraud. However, the appellant maintains that it was left to the

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<sup>1</sup> At the time of the complaint, Ms. Pedraza and the appellant were non-civil service employees as they were employed at the Morristown Motor Vehicle Agency (Agency), during the period of time it was privatized.

employee's discretion as to whether to speak another language, other than English, to the customers.

In response, the DCR/AA reiterates that its investigation supported the finding that the appellant had violated the State Policy. During its investigation, the DCR/AA interviewed Ms. Pedraza, the appellant and their co-workers, visited the facility, collected and reviewed census data of the community, and reviewed the relevant documentation. The investigation determined that the appellant had "engage[d] in . . . an employment practice . . . which treat[ed] an employee less favorably based on a person's . . . national origin or ancestry." Moreover, the investigation revealed that the appellant subjected *all* Hispanic employees in the office to third party harassment.

The investigation revealed that the appellant had instituted an English-only policy, which she maintained had been recommended by the "Agents." However, the Motor Vehicle Commission indicated that there was never a recommendation to terminate or discipline employees who failed to abide by the "language policy." Moreover, the investigation revealed that the appellant inappropriately used the English-only policy to justify charges of insubordination. Further, the witnesses provided a multitude of examples where the appellant treated Hispanic customers and employees significantly worse than non-Hispanic individuals. For example, the appellant refused to display available Spanish language posters; forced Hispanic customers to speak English or to return with an interpreter, even though she employed several employees who spoke Spanish; and constantly interrogated Hispanic customers and employees regarding conversations which occurred in Spanish, even though her Supervising Customer Service Representative, who spoke Spanish, was present and available. The DCR/AA notes that all of the employees indicated that the appellant had a "problem with the language" and it led her to mistreat the Hispanic employees and customers.

The DCR/AA noted that the appellant indicated to the DOL that one of the reasons for Ms. Pedraza's termination was the abuse of her sick and vacation leave. However, the investigation revealed that the appellant had advised her staff to use as much sick and vacation leave as possible before the control of the Agency returned to the State in July 2003. Moreover, it was revealed that all staff members used as much sick and vacation leave as possible, and several used more than Ms. Pedraza. The appellant also indicated to the DOL that Ms. Pedraza was loud and aggressive. However, all of the employees who were interviewed denied that Ms. Pedraza was loud and aggressive. Instead, they all described her as "extremely committed and [as] making extra efforts to provide assistance to the Spanish speaking community." Therefore, based on the foregoing, the DCR/AA determined that the appellant's claims to the DOL, which were found to be inaccurate, affected the credibility of her allegations against Ms. Pedraza.

The DCR/AA noted that since the appellant was not a State employee at the time of the incidents, no discipline was recommended based on its findings. However, it did recommend the immediate rehiring of Ms. Pedraza. It further recommended that the appellant receive training in diversity in the workplace, cultural sensitivity and

management skills. Finally, the DCR/AA recommended that the appellant be advised to discontinue her English-only policy.

It is noted that although the appellant was not a State employee during the time period when the incidents occurred, she had signed an Agent contract with the former Division of Motor Vehicles (Division). The contract, which was effective November 1, 2002, provided that:

In the hiring of persons for the performance of work under this contract or any subcontract hereunder . . . no Agent or any person acting on behalf of such Agent or any subcontractor shall, by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates.

No Agent, subcontractor, nor any person on his or her behalf, shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder . . . on account of race, creed, color, national origin, ancestry, sex, marital status or disability.

The Agent will take affirmative action when employment opportunities are available to ensure that qualified applicants are employed, and that employees are treated during employment without regard to their race, creed, color, national origin, ancestry, sex, marital status, or disability. This provision shall apply to but not be limited to employment upgrading, demotion, transfer, recruitment advertising, layoff or termination, compensation and rates of pay, and selection for training, including apprenticeship.

It is further noted that in January 2003, the State Legislature passed *N.J.S.A. 39:2A-5(b)* which provides that:

Upon action of the [New Jersey Motor Vehicle] commission, all agency employees shall become employees of the commission. Such employees shall be assigned to appropriate titles by the Department of Personnel. Those private motor vehicle agency employees who were employed by the agency on or before January 1, 2003 and who are assigned to career service titles upon employment with the commission shall, upon completion of the special probationary period described in section 7 of this act, attain permanent, regular appointments in their respective titles.

## **CONCLUSION**

In the instant matter, the appellant disputes that she terminated Ms. Pedraza in violation of the State Policy. Instead, she asserts that Ms. Pedraza was insubordinate and

had abused her sick and vacation leave. However, after the DCR/AA's investigation of Ms. Pedraza's allegations, it found that the appellant was not credible since all of the witnesses indicated that Ms. Pedraza was not insubordinate. Moreover, the documentation revealed that the appellant had told her employees to utilize as much sick and vacation leave as possible and that several employees used more sick and vacation leave than Ms. Pedraza. Further, the investigation revealed that the appellant consistently treated both Hispanic employees and customers significantly worse than non-Hispanic customers and employees. Although the appellant claimed her English-only policy only prohibited employees from speaking to one another in Spanish, the investigation revealed that she refused to provide services to Hispanic customers unless they spoke English or returned with an interpreter. The Board agrees with the investigation's conclusion that the appellant's actions were exceedingly inappropriate and reasonably interpreted as a violation of the State Policy on the basis of Ms. Pedraza's national origin and that the appellant had subjected her employees to third party harassment based on her actions. Accordingly, since the appointing authority's investigation was thorough and impartial, sufficient basis exists to find that the appellant violated the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace.

However, the Board is concerned with the DOT's "punishment" in this matter. Rather than institute disciplinary action against the appellant, it merely provided her with training since she was not a State employee at the time. However, the Board finds that under the particular circumstances of this matter, the DOT or the Motor Vehicle Commission (Commission) could have instituted disciplinary action against the appellant. Specifically, it is noted that although the appellant was not a State employee, she had signed an Agent contract, which, like the State Policy, prohibited discrimination against any employee on the basis of race, creed, color, national origin, ancestry, sex, marital status or disability. Moreover, during all relevant times, the appellant was aware that she, and the other employees of the Agency, would soon be State employees, pursuant to *N.J.S.A. 39:2A-1, et seq.*, which was passed in January 2003. Therefore, since the appellant, like a State employee, was under a duty not to discriminate against other employees, then clearly, the violations of the State Policy sustained in this matter could have merited a significantly more severe penalty, including, but not limited to, a disciplinary suspension. Consequently, it is necessary to remand this matter to the Commission for further consideration of the penalty. The Board reminds the Commission that the appellant's behavior was severe and pervasive, and the penalty should sufficiently indicate to her the seriousness of her actions.

## **ORDER**

Therefore, it is ordered that this appeal be denied but the matter be remanded to the Motor Vehicle Commission for further consideration as to the penalty.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.